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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 731

KENNETH R. JONES,

Petitioner,

vs.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY BRIEF

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At two points in their brief (pp. 7, 12) respondents claim that shortly after Jones handed out the leaflet involved here, Stokely Carmichael came to the campus and caused a riot. They assert no causal connection between Jones' leaflet and these gratuitously alleged events.

Nevertheless for the sake of clarity it should be pointed out that these statements are incorrect. Mr. Carmichael's appearance on the campus and the disturbances in the neighborhood occurred several months prior to Jones' handing out his leaflet.

Mr. Carmichael's appearance in Nashville and the events that took place thereafter were not relevant to this case,

so they were not developed in the record. As was done to refute respondents' erroneous extra-record assertions in Petitioners' Reply Brief on Petition for Writ of Certiorari, reference may be made to *Brooks* v. *Briley*, 274 F. Supp. 538 (M.D. Tenn. 1967), *aff'd mem.*, 391 U.S. 361 (1968) for the correct sequence of events: Mr. Carmichael's appearance in Nashville was April 6-8, 1967. 274 F. Supp. at 543. The disturbances in Nashville's Negro district occurred April 8-10, 1967. 274 F. Supp. at 543-44.

The leaflet was composed on August 18, 1967 (A. 45, 154).

The record is barren of any indication of unrest at or about the time Jones was said to have handed out his leaflet.

II.

In their statement of the evidence at p. 7 of their brief, respondents refer to the school regulation prohibiting violation of any city, county, state, or federal law, implying that Jones was disciplined for violating this regulation. They omit reference, however, to the explicit testimony (A. 120) of the Chairman of the FAC that this was not a ground of dismissal.

III.

At p. 12 of their brief, respondents invoke the hoary dictum of *McAuliffe* v. *City of New Bedford*, 155 Mass. 216, 220, 29 N.E. 517 (1892) to suggest that students, by analogy to Nineteenth Century policemen, "are relegated to a watered down version of constitutional rights," *Garrity* v. *New Jersey*, 385 U.S. 493, 500 (1967). Such continuing vitality that this dictum might have has been largely (and, as far as is relevant here, entirely) repudiated by *Garrity*

and by *Keyishian* v. *Board of Regents*, 385 U.S. 589, 605-06 (1967). See also *Pickering* v. *Board of Education*, 391 U.S. 563, 568 (1968).

Respondents' further analogy to policemen by reliance on *Meehan* v. *Macy*, 392 F.2d 822 (D.C. Cir. 1968) ignores the fact that this opinion appears to be undercut by the subsequent per curiam opinion on rehearing *en banc*, No. 20812 (May 12, 1969).

At any rate, whatever the law is as to policemen, *Tinker* v. *Des Moines School District*, 393 U.S. 503 (1969) firmly establishes students' first amendment rights.

IV.

Respondents devote more than two pages of their brief (pp. 13, 14-15, 19) to quotations from *Norton* v. *Discipline Committee of East Tennessee State University*, No. 19107 (6th Cir. November 28, 1969). Attention is invited to the petition for certiorari filed in *Norton*, docketed December 29, 1969, No. 1011, 1969 Term, for discussion of this opinion and for further illuminating the contexts in which students' first amendment problems arise.

Respectfully submitted,

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